



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/360,262 07/26/99 REDDING

B DFG1004.5-US

IM22/0508

MARTIN SAVITZKY ESQ
SYNNESTVEDT & LECHNER
1101 MARKET STREET 26TH FLOOR
PHILADELPHIA PA 19107

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

05/08/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/360,262

Applicant(s)
Redding Jr et al

Examiner
Drew Becker

Group Art Unit
1761



☒ Responsive to communication(s) filed on Jul 26, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1761

DETAILED ACTION

Priority

1. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. The current status of all nonprovisional parent applications referenced should be included.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 2 recites "abrupt pressure change from about 0.8 to about 1.2 atm to greater than 13,000 psi to about 100,000 psi". It is not clear whether this represents a single range or 2 separate ranges.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1761

6. Claims 1, 5, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen [Pat. No. 3,389,997].

Allen teaches a method for modifying the properties of particulate dietary fiber by dispersing the fiber in a liquid medium (column 2, lines 4-15), the use of oat and wheat fiber (column 1, line 57), applying an abrupt pressure change (column 2, line 8), recovering the modified fiber (column 2, line 61), and the liquid medium containing 16.7% dispersed fiber (column 2, line 72).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen [Pat. No. 3,389,997].

Allen teaches a method for modifying the properties of particulate dietary fiber by dispersing the fiber in a liquid medium (column 2, lines 4-15), the use of oat and wheat fiber (column 1, line 57), applying an abrupt pressure change (column 2, line 8), recovering the modified fiber (column 2, line 61), the liquid medium containing 16.7% dispersed fiber (column 2, line 72), and mechanical separation (column 2, line 62). Allen does not recite any temperature ranges and drying the treated fiber. It would have been obvious to one of ordinary skill in the art to dry the

Art Unit: 1761

treated fiber of Allen since removing excess moisture would make the product easier to transport due to its decreased weight and greater resistance to bacterial spoilage. It would have been obvious to one of ordinary skill in the art to conduct the treatment of Allen at 25°C since this is approximately room temperature.

9. Claims 2 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Eberly Jr [Pat. No. 3,556,414].

Allen teaches a method for modifying the properties of particulate dietary fiber by dispersing the fiber in a liquid medium (column 2, lines 4-15), the use of oat and wheat fiber (column 1, line 57), applying an abrupt pressure change in the form of a shock wave (column 2, line 8), recovering the modified fiber (column 2, line 61), the liquid medium containing 16.7% dispersed fiber (column 2, line 72), and mechanical separation (column 2, line 62). Allen does not recite any temperature ranges and drying the treated fiber. Allen does not recite a pressure range of the shock wave. Eberly Jr teaches a method of disrupting plant cells by a rapid pressure change of greater than 10,000 psi (column 12, line 4). It would have been obvious to one of ordinary skill in the art to incorporate the pressure range of Eberly Jr into the invention of Allen since Eberly Jr teaches the advantage of breaking down the cells without damaging the various parts (column 1, lines 5-14) and since Allen also relies upon a quick pressure change in the form of a shock wave to modify cellular structures. Although Allen does not recite an effect on water and oil retention, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on

Art Unit: 1761

the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *Kropa v. Robie*, 88 USPQ 478, 481 (CCPA 1951). Regardless, Bodine [Pat. No. 3,320,992] teaches the extraction of moisture and oils from sonically treated fibers (column 1, lines 8-70).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 4:00 pm and every other Friday from 7:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Drew Becker

May 1, 2000


KEITH HENDRICKS
PRIMARY EXAMINER